

THE CITY OF NEW YORK
DEPARTMENT OF INFORMATION TECHNOLOGY
AND TELECOMMUNICATIONS

REQUEST FOR PROPOSALS
FOR
FRANCHISES FOR THE USE AND INSTALLATION OF FIBER OPTIC CABLE
AND ASSOCIATED EQUIPMENT, INCLUDING CELL AND ANTENNA FACILITIES,
IN CONNECTION WITH
THE PROVISION OF
MOBILE TELECOMMUNICATIONS AND HIGH-CAPACITY
TELECOMMUNICATIONS SERVICES RELATING TO
MOBILE TELECOMMUNICATIONS

IMPORTANT:

IT IS UNLAWFUL TO ENGAGE IN ACTIVITY THAT UNDERMINES OR THWARTS THE FAIR AWARD OF THE CONTRACT RELATED TO THIS RFP. THE NEW YORK CITY COMPTROLLER IS CHARGED WITH THE AUDIT OF CONTRACTS IN NEW YORK CITY. IF YOU BELIEVE THAT THERE HAS BEEN UNFAIRNESS, FAVORITISM OR IMPROPRIETY IN CONNECTION WITH THIS PROPOSAL PROCESS, PLEASE CONTACT THE COMPTROLLER, OFFICE OF CONTRACT ADMINISTRATION, ONE CENTRE STREET, ROOM 835, NEW YORK, NEW YORK 10007. TELEPHONE NUMBER (212) 669-3000.

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NOTICE

The New York City Department of Information Technology and Telecommunications ("DoITT") has been authorized to grant franchises to licensed mobile telecommunications providers for the use and installation of fiber optic cable and associated equipment, including cell and antenna equipment and facilities, in connection with the provision of mobile telecommunications and high-capacity services and to grant franchises for high-capacity telecommunications services relating to mobile telecommunications. A self-explanatory Request for Proposals ("RFP") is enclosed. Questions regarding this RFP should be directed to the authorized DoITT contact person designated on the RFP cover sheet.

1.0 INTRODUCTION

1.1 BACKGROUND

By Executive Order 8, dated April 12, 1990, the Mayor designated the Department of Telecommunications as the responsible agency for the granting of telecommunications franchises. Pursuant to Local Law 71 of 1990, the Department of Telecommunications became the Department of Telecommunications and Energy ("DTE"). Pursuant to Local Law 24 of 1994, DTE was consolidated into the Department of Information Technology and Telecommunications ("DoITT").

1.1.1 REGARDING MOBILE TELECOMMUNICATIONS SERVICES

Pursuant to Section 363 of the Charter of the City of New York (the "Charter"), the Commissioner of DoITT has made the initial determination of the need for franchises in connection with the provision of mobile telecommunications services and pursuant to said Section 363, the Mayor has submitted to the New York City Council (the "Council") a proposed authorizing resolution for such franchises.

On July 19, 1994, the Council, after making several modifications thereto, adopted said authorizing resolution (Resolution No. 438, attached hereto as "Exhibit A") which authorized DoITT to grant non-exclusive franchises for the installation of fiber optic cable and associated equipment utilizing the inalienable property of the City in connection with the provision of mobile telecommunications services. Pursuant to that authorization, DoITT hereby issues this RFP for such franchises.

For purposes of this RFP, "mobile telecommunications services" shall mean one-way paging services, conventional mobile radio telephone service, cellular telecommunications service, and personal communications network services, capable of transmitting voice and/or data signals.

1.1.2 REGARDING LOCAL HIGH CAPACITY TELECOMMUNICATIONS SERVICES

Pursuant to Section 363 of the Charter, the Commissioner of DoITT has made the initial determination of the need for franchises in connection with the provision of local, high-capacity telecommunications services and pursuant to said Section 363, the Mayor submitted to the Council a proposed authorizing resolution for such franchises.

On March 26, 1992, the Council, after making several modifications thereto, adopted said authorizing resolution (Resolution No. 404, attached hereto as "Exhibit B") which authorized DoITT to grant non-exclusive franchises for the installation of cable, wire or optical fiber and associated equipment on, over and under the inalienable property of the City to be used in the provision of local, high-capacity telecommunications services (as defined in said authorizing resolution). Pursuant to that authorization, DoITT hereby issues this RFP for such franchises to the extent described in Section 4.1.2 of this RFP.

1.1.3 Generally

In the view of DoITT, the installation within the inalienable property of the City of fiber optic cable and associated equipment including cell and antenna equipment and facilities related thereto, will improve the quality and availability of mobile and high-capacity telecommunications services in the City by improving the availability and accessibility of antenna and cell sites and the connection of such sites by fiber optic cable.

Also, the use and installation of such facilities and equipment will provide for the deployment of innovative technologies serving the diverse needs of the City's residents, businesses, and utilities by providing practical service for everyday communications as well as easy access to emergency services, health services, commercial activities and homes.

In addition, the installation of such facilities will provide redundancy and route diversity and an alternative to traditional telephone services in the event of localized or citywide disasters.

Franchises granted pursuant to this RFP will be non-exclusive and it should be noted that multiple franchise awards may be made by the agency. By making multiple awards to proposers meeting the criteria established within this RFP, DoITT hopes to contribute to the strength of the City's telecommunications infrastructure and promote fair competition within the industry. It should be further noted that DoITT reserves the right to issue additional RFPs for such services in the future.

1.2 RFP TIMETABLE

Release date of this RFP: November 27, 1996

A pre-proposal conference will be held December 13, 1996

All proposals must be submitted by the close of business on
January 15, 1996 ("the Proposal Due Date").

Proposals must be delivered to Elaine Reiss, New York City Department of Information Technology and Telecommunications, 11 MetroTech Center, 3rd Floor, Brooklyn, New York, 11201.

NOTE: AFTER THE SELECTION OF PROPOSERS WHO MEET THE MINIMUM FRANCHISE QUALIFICATIONS, DoITT EXPECTS TO ENTER INTO CONTRACT NEGOTIATIONS WITH SUCH PROPOSERS. IF AGREEMENT IS REACHED BETWEEN DoITT AND SUCH PROPOSERS AS TO THE TERMS AND CONDITIONS OF A FRANCHISE CONTRACT, CONSISTENT WITH THE AUTHORIZING RESOLUTION, THEN THE PROPOSED FRANCHISE CONTRACT WILL BE SUBMITTED TO THE FRANCHISE AND CONCESSION REVIEW COMMITTEE ("FCRC") FOR ITS APPROVAL CONSISTENT WITH THE REQUIREMENTS OF SECTION 373 OF THE CHARTER. ADDITIONALLY, ALL PROPOSED FRANCHISE AGREEMENTS, IF APPROVED BY THE FCRC, SHALL BE PRESENTED TO THE MAYOR FOR APPROVAL PURSUANT TO SECTION 372 OF THE CHARTER AND, UPON SUCH APPROVAL, SHALL BE REGISTERED WITH THE COMPTROLLER PURSUANT TO SECTION 375 OF THE CHARTER. NO FRANCHISE SHALL BE DEEMED

GRANTED UNLESS AND UNTIL THE APPROVALS AND REGISTRATION SET FORTH IN THIS PARAGRAPH HAVE BEEN GRANTED AND COMPLETED.

ONLY PROPOSERS WHO HAVE BEEN LICENSED BY THE FEDERAL COMMUNICATIONS COMMISSION ("FCC") TO PROVIDE MOBILE TELECOMMUNICATIONS SERVICES ARE ELIGIBLE TO APPLY FOR FRANCHISES HEREUNDER, EXCEPT THAT PROPOSERS WHO HOLD LOCAL HIGH-CAPACITY TELECOMMUNICATIONS FRANCHISES FROM THE CITY ARE ELIGIBLE TO APPLY FOR EXPANSION OF THEIR FRANCHISE AUTHORITY HEREUNDER, PURSUANT TO SECTION 4.1.2 HEREOF, EVEN IF THEY ARE NOT FCC LICENSEES.

1.3 GENERAL INFORMATION

1.3.1 Status of Information

DoITT shall not be bound by any oral or written information released by the agency prior to the issuance of this RFP.

1.3.2 Applicant Inquiries

All inquiries regarding this RFP must be addressed to the Agency Contact Person designated on the cover sheet of this RFP. Applicants are advised that DoITT cannot ensure a response to inquiries regarding this RFP received later than ten (10) days before the Proposal Due Date.

1.3.3 Communication with DoITT

Applicants are advised that from the date of issuance of this RFP until the date of the selection of proposers who meet the minimum franchise qualifications, no contact with agency personnel related to this RFP is permitted, except as may be authorized by the Agency Contact Person designated on the cover sheet of this RFP.

1.3.4 Addenda

DoITT will issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the Proposal Due Date.

Applicants should not rely on any representations, statements or explanations other than those made in this RFP or in a written addenda hereto.

It is the applicant's responsibility to assure receipt of all addenda. The applicant should verify with the Agency Contact Person designated on the cover sheet of this RFP prior to submitting a proposal that all addenda have been received. Applicants are required to acknowledge the number of addenda received as part of their proposals.

1.3.5 Pre-Proposal Conference

A pre-proposal conference will be held on December 13, 1996 at 10:00 a.m., at 11 MetroTech Center, Brooklyn, N.Y. 11201. The conference will be conducted by DoITT personnel to assist applicants in understanding the RFP and franchising requirements. Nothing stated at the conference shall change this RFP unless the change is made in writing by the Agency Contact Person designated on the cover sheet of this RFP. A written summary of the conference, including the names and affiliations of all attendees, shall be maintained by DoITT in its agency contract file.

Attendance at the pre-proposal conference is not mandatory but applicants are encouraged to attend.

Applicants are requested to inform the Agency Contact Person designated on the cover sheet of this RFP of the number of persons expected to attend the conference not later than twenty-four (24) hours before the scheduled conference date.

Applicants are encouraged to submit written questions in advance.

1.3.6 Modified Proposals

Applicants may submit modified proposals to replace all or any portion of a previously submitted proposal until the Proposal Due Date. The Evaluation Committee will consider only the latest version of a proposal.

1.3.7 Late Proposals or Modifications

Proposals or modifications of proposals received after the Proposal Due Date shall be deemed late and will not be considered for a franchise award.

1.3.8 Costs Incurred by Applicants

DoITT shall not be liable for any costs incurred by applicants in the preparation of proposals or for any work performed in connection therewith.

1.3.9 Oral Presentation and Interviewing

DoITT may require applicants to give oral and/or visual presentations in support of their proposals, or to exhibit or otherwise demonstrate the information contained therein.

1.3.10 Negotiations

DoITT expects to enter into negotiations with proposers who meet minimum franchise qualifications.

DoITT may negotiate with one or more proposers who meet the minimum franchise qualifications.

No applicant shall have any rights against DoITT or the City of New York arising from such negotiations or from DoITT's failure to negotiate.

1.3.11 Applicant Acceptance of Franchise Provisions

By submitting a proposal to this RFP, an applicant indicates to DoITT that it understands and accepts that, at a minimum, the terms and conditions set forth in Resolution No. 438, adopted by the Council on July 19, 1994 and attached hereto as "Exhibit A" and/or to the extent the applicant seeks expanded authority to provide high-capacity services (as provided in Section 4.1.2 of this RFP), the terms and conditions set forth in Resolution No. 404 adopted by the Council on March 26, 1992 and attached hereto as "Exhibit B", will become a part of any franchise granted pursuant hereto. Specifically, applicants acknowledge that a franchise contract will be subject to, among other things, completion and submission of questionnaires in connection with the City's Vendor Information Exchange System ("VENDEX") and review of the information contained therein by the Department of Investigation.

1.3.12 RFP Postponement or Cancellations

DoITT reserves the right to postpone or cancel this RFP and to reject all proposals at any time, and to amend this RFP at anytime.

1.3.13 Confidential or Proprietary Information

It is not expected that information supplied by an applicant in its proposal(s) will be confidential. In the event an applicant believes that specific information it must submit to respond fully and completely to this RFP should be treated confidentially by the City, it should so advise DoITT in writing. DoITT will attempt to treat as confidential proprietary information of any applicant, consistent with legal requirements. Any allegedly proprietary information contained in a proposal must be clearly designated as such, and should be separately bound and labeled with the words "Proprietary Information." Appropriate reference to this separately bound information must be made in the body of the proposal. **MARKING THE ENTIRE PROPOSAL AS PROPRIETARY WILL RESULT IN THE PROPOSAL BEING RETURNED TO THE APPLICANT UNREAD.**

Applicants should be aware, however, that DoITT may be required, pursuant to the New York State Freedom of Information Law ("FOIL") (New York Public Officers Law Section 87 *et seq.*), to disclose a written proposal or portion thereof submitted in connection with this RFP. In the event that such disclosure is requested by a third party, DoITT will provide notice to the applicant as far in advance as practicable of any deadline for responding and shall consult with applicant to evaluate the extent to which such information may be withheld from disclosure under the provisions of FOIL. Consistent with the requirements of FOIL, the final determination whether such information may be withheld from disclosure shall be made by DoITT. In the event that DoITT determines that information may not be withheld, DoITT will attempt to provide the applicant with timely notice of intent to disclose in order that the applicant may invoke any rights or remedies to prevent disclosure to which it believes it may be entitled under the law.

The applicant expressly acknowledges and agrees that neither DoITT nor the City of New York will have any obligation or liability to applicant in the event of disclosure of materials designated by the applicant as "Proprietary Information".

1.4 PROPOSAL EVALUATION PROCEDURES

1.4.1 Evaluation Committee

Proposals shall be reviewed by an Evaluation Committee consisting of no fewer than three (3) persons with knowledge, expertise and experience sufficient to make a fair and reasonable evaluation of the proposals.

Written evaluation forms shall be used to evaluate proposals and shall be signed and dated by all members of the Evaluation Committee. Initial evaluations may be amended, and the amended evaluations shall be recorded on amended evaluation forms. Copies of all initial and amended evaluation forms shall be maintained as part of DoITT's contract files.

1.4.2 Proposal Evaluation Criteria

The criteria to be used by the Evaluation Committee in evaluating proposals shall be:

- (a) the adequacy of the proposed compensation to be paid to the City;
- (b) the financial, legal, technical and managerial experience and capabilities of the applicant;
- (c) the ability of the applicant to maintain the property of the City in good condition throughout the term of the franchise;
- (d) the value, efficiency and scope of the public service to be provided;
- (e) the value of any telecommunications facilities and services offered by the applicant to the City; and
- (f) the extent to which proposals commit to provide service pursuant to the franchise to areas of the City outside the borough of Manhattan and north of 96th Street in Manhattan.

1.4.3 Proposal Package

At a minimum, the proposal must be comprised of:

- (a) Technical Proposal - a narrative and/or other appropriate form of presentation which:
 - (i) describes the equipment and facilities which will utilize the inalienable property of the City;
 - (ii) describes the services to be provided by such equipment and facilities;
 - (iii) sets forth the method(s)

of installation of such facilities and equipment; (iv) sets forth where such facilities and equipment will be installed and what portion, if any, of such equipment or facilities will be placed on property other than the inalienable property of the City; (v) describes the applicant's plans for repair, maintenance and/or removal of such facilities and equipment; and (vi) describes the applicant's plans for maintaining the City's property in good condition during the term of the franchise. Note: Maps, drawings, illustrations, charts or other graphic descriptions should be included in this portion of the proposal.

(b) Legal and Managerial Proposal - (i) a narrative which indicates that the applicant has secured all necessary authorizations, approvals, licenses, and/or permits from the Federal Communications Commission and the New York State Public Service Commission required to provide the services sought to be provided under the franchise. Please note that only persons licensed by the Federal Communications Commission to provide mobile telecommunications services may be granted franchises pursuant to this RFP (except that proposers who hold local, high-capacity telecommunications franchises from the City are eligible to apply for expansion of their franchise authority hereunder pursuant to Section 4.1.2 hereof even if they are not FCC licensees); and (ii) a narrative which describes the managerial experience and capabilities of the applicant. Such narrative may be in a format of the proposer's choice and may include: business references, a list of similar work performed by the applicant, an organizational chart or outline identifying the names and titles of senior management responsible for all aspects of the system, and any other information the proposer deems relevant.

(c) Financial Proposal - a narrative which describes the applicant's financial ability to undertake the construction, operation, maintenance and removal of the system sought to be installed pursuant to a franchise granted under this RFP. Such narrative may be in a format of the proposer's choice and may include any financial information deemed relevant by the applicant.

(d) Compensation Proposal - a complete description of the applicant's proposed compensation to the City for the use of the City's inalienable property. Such description may be in a format of the proposer's choice but should at a minimum conform to the requirements of this RFP set forth hereafter.

(e) Acknowledgment of Addenda - a form, which when completed and submitted with the proposal package, serves as the applicant's acknowledgment of the receipt of addenda to this RFP which may have been distributed prior to the Proposal Due Date.

1.4.4 Proposal Submissions Requirements

Proposers are required to submit one (1) signed original and four (4) copies of each proposal package.

There is no page limitation for the proposals.

Proposals are due by the close of business on the Proposal Due Date.

2.0 SPECIAL INSTRUCTIONS

During the period between the Release Date of this RFP and the Proposal Due Date, applicants are required to communicate concerning this RFP only with Elaine Reiss, General Counsel of DoITT, at the telephone number listed on the cover sheet of this RFP, except as otherwise specifically directed by Ms. Reiss.

In the event that DoITT requires clarification of any portion of an applicant's proposal, it is possible that DoITT staff, other than Ms. Reiss, may contact an applicant with a request for information. Applicants are asked to promptly answer such requests in writing (by facsimile, if possible). Under no circumstances will a modification or explanation of the requirements of this RFP by DoITT be made formally other than in writing. No applicant's request for information will be considered formal unless made to Ms. Reiss.

Applicants are referred to Exhibit C which contains the following materials: (1) "Investigation Clause" which will be included in any franchise contract entered into by DoITT pursuant to this RFP; and (2) "McBride Principles Rider" and "Affirmation" which will be required to be signed by all applicants and which will be included in any franchise contract entered into by DoITT pursuant to this RFP.

3.0 RESERVATION OF RIGHTS

DoITT reserves the right to require the submission of additional information from any applicant or proposer at any time after the Proposal Due Date and before the effective date of any franchise granted pursuant to this RFP.

4.0 ADDITIONAL PROVISIONS

4.1 GENERALLY

4.1.1 Options for Licensed Providers

It is the intention of this RFP to provide FCC licensed mobile telecommunications service providers ("Licensed Providers") substantial flexibility in the development of their network architecture. This RFP has thus been structured to permit such service providers to seek any or all of the following types of authority to use the inalienable property of the City in connection with their networks:

- Licensed Providers who have or will have all their antennas or cell sites on private property, but who wish to install and use fiber optic or other telecommunications cable and associated equipment in the City's inalienable property to transport signals to and from such antennas or cell sites, may seek such authority under this RFP.
- Licensed Providers who obtain or will obtain all of their land-based signal transport needs with respect to City inalienable property from other entities that have authority

to operate telecommunications cable in the City's inalienable property, but who wish to obtain the authority to install and use antenna or cell equipment on street or traffic light poles or highway sign supports located in the inalienable property of the City, may seek such authority under this RFP.

Licensed Providers who seek the authority both to install and use antenna or cell sites on City street or traffic light poles or highway sign supports located in the inalienable property of the City and to install and use telecommunications cable for mobile signal transport in City inalienable property may seek both types of authority under this RFP.

Licensed Providers who seek the authority to install and use telecommunications cable for mobile signal transport may also seek authority under this RFP to use such cable for the provision of local high-capacity telecommunications services.

Licensed Providers who are or become holders or are related to holders of a local, high-capacity telecommunications services franchise (or of a substantial interest in such a franchise) from the City who wish to expand, or cause to be expanded, the authority to use the facilities installed pursuant thereto to include the provision of mobile telecommunications services may seek such expansion of authority under this RFP.

4.1.2 Options for Local High-Capacity Providers

In addition, in order to encourage further flexibility in the development of mobile telecommunications networks in the City, it is the intention of this RFP to offer, under Council authorizing resolution 404, to holders of local high-capacity telecommunications service franchises from the City, the opportunity to expand their existing high-capacity authority to include the right to install, for the purpose of leasing capacity on, mobile telecommunications cell or antenna facilities on City street and traffic light poles and highway sign supports. Currently, local high-capacity franchises are limited, in the mobile telecommunications field, to leasing fiber capacity. Expanded authority granted pursuant to this RFP would expand such leasing authority to include leasing capacity of cells, antennas and similar equipment. Current holders of local, high-capacity franchises may submit a response to this RFP setting forth a proposal for installing mobile telecommunications cell or antenna facilities, and leasing capacity on such facilities to either (a) unrelated parties, or (b) related parties if such related parties hold or obtain mobile telecommunications franchises offered under Council authorizing resolution 438. Such a proposal should include all items required for cell or antenna proposals pursuant to this RFP (including without limitation the requirements set forth in Section 4.2 hereof). Because this expanded high-capacity authority is being offered pursuant to Council authorizing resolution 404 rather than 438, holders of local high capacity telecommunications service franchises seeking only such expanded authority are not required to be licensed by the FCC to provide mobile telecommunications service. However, proposers who are not licensed by the FCC to provide mobile telecommunications service should recognize that because they would not be receiving a mobile telecommunications franchise under authorizing

resolution 438, they would not be entitled through this franchise to use their facilities located in the inalienable property of the City to themselves provide mobile telecommunications services (either directly or through related parties) but will be limited to the right to lease capacity to either unrelated mobile telecommunications providers or to related mobile telecommunications providers that hold mobile telecommunications franchises from the City.

4.1.3 Applicable Provisions

Applicants who intend to apply for authority only to install and use antenna or cell equipment on street or traffic light poles or highway sign supports (because, for example, any cable portions of their network will be obtained from others) should review Section 4.2 for provisions regarding such authority. Applicants who intend to apply for authority only for the installation and use of cable (because, for example, their antennas are expected to be located entirely on private property) should review Section 4.3 for provisions regarding such authority. Applicants who intend to seek authority to install and use both these types of facility should review both Sections 4.2 and 4.3, as both sections will be applicable (thus, for example, such providers will be subject to franchise fees with respect to antennas or cell equipment under Section 4.2 as well as franchise fees with respect to use of telecommunications cable under Section 4.3). All applicants should review Section 4.4, which will be generally applicable.

4.1.4 Limitation on Sites

This RFP is not offering access to sites for antenna or cell equipment other than certain street light poles, traffic light poles and certain highway sign supports¹. It is possible that a future RFP or RFPs will be issued offering other types of sites (such as City buildings) or other types of street facilities, equipment or furniture for use for antenna or cell equipment.

4.1.5 Franchise Term

Any franchise or franchises granted pursuant to this RFP under City Council Authorizing Resolution 438 will have a term equal to the maximum term permitted pursuant to City Council Authorizing

¹ The street and traffic light poles available for use shall be limited to the standard fabricated steel shafts at least twenty feet tall. Other street or traffic light poles of shorter height shall not be used unless specifically authorized by the City. The highway sign supports available for use shall be limited to those located on limited access highways (and only those limited access highways which are inalienable property of the City) and only those supports that support signs which fully traverse the traffic lanes of the highway in a least one traffic direction. Supports for other types of signs (such as roadside traffic signs) shall not be used unless specifically authorized by the City.

Resolution 438, that is, 15 years including any renewal option (provided however, that franchise agreements may include provisions for termination prior to the scheduled expiration upon default or other special circumstances). Any expansion of franchise authority pursuant to this RFP under City Council Authorizing Resolution 404 shall have a term equal to the remaining term of the existing franchise under which authority is being expanded (and shall be subject to any prior termination provisions thereof).

4.2 ADDITIONAL REQUIREMENTS FOR PROPOSALS FOR CELL OR ANTENNA EQUIPMENT LOCATED ON LIGHT POLES AND HIGHWAY SIGN SUPPORT POLES

4.2.1 Design of Cell or Antenna Equipment

(a) Proposals for locating cells or antennas and related facilities on street light poles (SLPs) or traffic light poles (TLPs) or highway sign supports (HSSPs) shall include at least a schematic design for and a photograph of, the equipment intended to be installed on SLPs/TLPs/HSSPs. The fullest possible design description and photographic depiction of the proposed installations are encouraged. Proposals may provide for as many as three elements of equipment to be installed on an SLP, TLP, or HSSP, to the extent consistent with the following parameters:

(i) One equipment housing in either of the two following forms:

(x) An equipment housing with a volume no greater than 2.8 cubic feet (except that for an initial period of eighteen months each franchisee will be permitted to utilize, on no more than twenty-five poles, a larger equipment housing with maximum dimensions of three feet by three feet by two feet; at the end of such eighteen month period any such larger housings must be removed or replaced by housings of no greater than 2.8 cubic feet). Equipment housings which meet the requirements of this sub-section (x) but which are not "sub-sized housings" under sub-section (y) below are referred to in this RFP as "standard housings".

(y) An equipment housing with maximum dimensions of 13 inches by 9 inches by 4 inches. Equipment housings described in this sub-section (y) are referred to in this RFP as "sub-sized housings".

(ii) Up to two stick-type antennas, each no more than two inches in diameter and extending no more than thirty-six inches in length, extending vertically from a base at the top of the pole or the top of the related equipment housing.

(iii) Wire or cable interconnecting the above elements with each other and with underground facilities, such wire or cable to be installed inside the SLP/TLP/HSSP and not externally.

(b) All equipment to be installed on a pole must be of a weight no greater than that compatible with the capacity of the pole to safely and securely support such equipment.

(c)

(i) Unless otherwise specifically permitted by the City, all equipment on a pole will be located on the vertical pole portion of the SLP/TLP/HSSP (that is, unless otherwise specifically permitted by the City, no equipment will be located on the horizontal portion or "arm" of the SLP/TLP/HSSP) and equipment housings shall be oriented vertically (that is, with the largest dimension being the height). Notwithstanding the preceding sentence however sub-sized housings and equipment related thereto may be located at the top of the curved arm of a street lightpole with a cobra-head fixture (immediately adjacent to the lamina itself) or at the junction of the curved arm and the pole.

(ii) On TLPs with signal "arms", housings shall be located in the "arm zone" (the "arm zone" is defined as the portion of the pole above the curved "arm" and below the short cross bar carrying the tension rods supporting the "arm"). On TLPs without signal "arms", and on SLPs, (except as permitted in (i) above) housings shall be located in an area no lower than fifteen feet above curb level and no higher than twenty feet above curb level.

(d) Each equipment housing must be painted the same color as the pole on which it is sited.

No writing, symbol, logo or other such graphic representation shall appear on any exterior surface of an equipment housing.

(c) Installation of equipment on poles shall be the subject to the City's right to review and approve the final design and appearance of all equipment to (i) insure compliance with all applicable laws, rules and regulations of the City (including to the extent applicable and without limitation, Landmarks Commission and Art Commission requirements), (ii) to insure public safety, the integrity of City facilities and non-interference with pedestrians and vehicular traffic, and (iii) to insure esthetic consistency with the poles to which the equipment will be attached and the surrounding context. Applicants should note that in some areas of the City (such as historic districts, business improvements districts or other types of areas) specially designed poles for that area have been or may be installed in some locations. Franchisees seeking to install equipment on such specially designed poles may be required to modify equipment design for consistency with special pole designs.

4.2.2 Power

Each franchisee will be responsible for obtaining electrical power for its equipment.

4.2.3 Radio Frequency Energy Exposure Limits

Proposals shall include documentation showing that the radio frequency energy exposure from equipment proposed to be installed will be below maximum legally permitted levels. Franchise

contracts issued pursuant to this RFP will permit the City to require periodic testing, at the expense of franchisees, to ensure compliance with radio frequency energy exposure requirements.

4.2.4 Designation of Pole Sites

Franchises granted pursuant to this RFP will incorporate the following site designation procedures: Promptly after franchises permitting the use of SLP/TLP/HSSP sites have been granted under this RFP, the City shall notify all mobile telecommunications franchisees permitted to use SLP/TLP/HSSP sites of an initial SLP/TLP/HSSP request date. No later than such date each franchisee shall submit to the City a written list of the specific SLP/TLP/HSSP sites it seeks to use. An SLP/TLP/HSSP site for which a franchisee thus requests designation shall be defined as being subject to a "Competing Request" when (A) such SLP/TLP/HSSP site shall also have been thus requested by another franchisee, or (B) such SLP/TLP/HSSP site and one or more other SLP/TLP/HSSP sites requested by other franchisees could not both or all be granted under the provisions of this Section 4.2 regarding the location and frequency of sites to be designated. Sites for which no Competing Request is received shall be designated to the requesting franchisee for its use. Sites for which one or more Competing Requests are received shall be considered "Contested Sites".

DoITT shall promptly thereafter set a date for receipt of sealed bids offering a monthly franchise fee which each franchisee seeking a Contested Site is willing to pay to the City for such Contested Site (in excess of the fee for sites which are not Contested Sites), and the site shall be designated to the highest bidder.

4.2.5 Franchise Fee for Uncontested Sites

Each proposer interested in using SLP, TLP and/or HSSP sites shall include in its proposal an offer of a franchise fee for such sites designated without a Contested Site bid procedure. Such offer must be either in accordance with the fixed-fee option described in subsection (a) hereof or the Flexible Fee Option described in subsection (b) hereof. It is the City's intention that by offering these two alternative methods of establishing a franchise fee for sites which are not Contested Sites, it will maximize the availability of competing and complementary mobile telecommunications services to the citizens of the City. Proposers may not propose a combination of these two options but must select one of the two, which would then be applicable throughout the term of its franchise.

(a) Fixed Fee Option

(i) SLP Sites. Each proposer that selects this option and that is interested in using SLP sites shall include in its proposal an offer of a fixed, monthly, per-pole franchise fee for SLP sites designated without a Contested Site procedure. Such offer shall be expressed as a dollar amount per month per designated, non-Contested Site SLP, and shall not be less than \$100 per month per site.

(ii) TLP Sites. Each proposer that selects this option and that is interested in

using TLP sites shall include in its proposal an offer of a fixed, monthly, per-pole franchise fee for TLP sites designated without a Contested Site procedure. Such offer shall be expressed as a monthly dollar amount per designated, non-Contested Site TLP and shall not be less than \$250 per month per site.

(iii) HSP Sites. Each proposer that selects this option and that is interested in using HSSP sites shall include in its proposal an offer of a fixed, monthly, per-pole franchise fee for HSSP sites designated, without a Contested Site procedure. Such offer shall be expressed as a dollar amount per designated, non-Contested Site HSSP and shall not be less than \$750 per month per site.

(iv) Combinations. Each proposer that selects this option and that is interested in using two or more of the three types of poles (TLP, SLP and HSSP) should include in its proposal offers covering each type of pole the proposer seeks to use, in conformance with the preceding subsections (i) through (iii).

(b) Flexible Fee Option

Any proposer may include in its proposal, instead of a fixed fee proposal pursuant to the preceding subsection (a), a proposal to pay as a franchise fee for the use of any non-Contested Sites (up to the maximum number of poles permitted as set forth in Section 4.2.9 (c)(i) below) the sum of:

(i) a fixed dollar amount per pole per month, which shall be not less than \$10 per pole per month, plus

(ii) a percentage of the franchisee's gross revenues (and those of entities related to the franchisee) from mobile telecommunications services, which percentage shall be not less than 5%.

4.2.6 Franchise Fee for Contested Sites

Franchises granted pursuant to this RFP will provide that the franchise fee payable for any Contested Site shall be the fee offered in the winning bid for such Contested Site. Such fee will be in addition to any fee due with respect to non-Contested Sites, whether such fee is a "fixed fee" pursuant to Section 4.2.5 (a) or a "flexible fee" pursuant to Section 4.2.5 (b).

4.2.7 Changes in Designations

Franchises granted pursuant to this RFP will provide for procedures for changes in pole site designation which are consistent with the following: Designation of SLP/TLP/HSSP sites to a particular franchisee shall be for seven and a half years (i.e., half the term of the franchise in the case of franchises granted under this RFP and City Council Authorizing Resolution 438; such seven and a half year period will represent a larger portion of the franchise term for franchisees granted additional authority under existing franchises pursuant to this RFP and City Council Authorizing Resolution 404). At the end of such seven and a half year period, DoITT shall provide for a

redesignation process pursuant to which such sites shall be available in the same manner as described above for initial designations, except that, (a) in no event shall the applicable monthly franchise fee for any such site be less than the monthly fee applicable to such site during the original seven and a half year designation period, and (b) at the end of any Contested Site sealed bid process in which the franchisee to which such site was previously designated is not the highest bidder, such previously designated franchisee shall nevertheless have the option of being redesignated for such site if it is willing to match the highest bid price for that site. In no event shall a designation of a site to a franchisee extend beyond the end of the franchisee's franchise term.

4.2.8 Miscellaneous Designation Matters

Franchises granted pursuant to this RFP will include provisions consistent with the following miscellaneous designation matters:

(a) Notwithstanding that an SLP, TLP or HSSP has been designated and/or is in actual use as an antenna/cell site, the City shall have the right at any time to require removal of such SLP, TLP or HSSP, or otherwise terminate the use of such SLP, TLP or HSSP site for antenna site purposes, in accordance with City lighting, construction, traffic, transportation or other similar government policies or activities. If the City shall exercise such right, the designated franchisee shall have the right to select for designation to it any alternative SLP/TLP/HSSP site not then designated. The fixed fee franchise fee for such replacement site shall be the non-Contested Site rate.

(b) Franchisees shall have the right at any time to request designation of additional (up to the permitted maximum set forth below at Section 4.2.9 (c) (i)) or replacement sites by submitting such request to DoITT. Other franchisees will have a specified period to contest such request, in which case Contested Site procedures will apply.

4.2.9 Location, Frequency and Maximum Number of Cell or Antenna Sites

Franchises granted pursuant to this RFP will include provisions consistent with the following siting requirements:

(a) SLP Sites

(i) Only SLP sites located at intersections will be designated to a franchisee under this RFP. SLP sites that are located other than at intersections are not being made available under this RFP.

(ii) Only facilities using sub-sized housings may utilize SLP sites, except that at intersections where there are no TLPs standard housings may be placed on up to two SLPs provided there are no TLPs within a 500-foot radius of such SLPs.

(iii) No SLP site shall be designated to a franchisee which is within a 500-foot

radius of any other site designated to that franchisee.

(iv) SLP sites shall be designated to franchisees under this RFP only up to the number which leaves two SLP sites at each intersection undesignated and thus available for future designation.

(b) TLP and HSSP Sites

(i) Only TLPs which support a signal "arm" reaching into the street will be available as sites under this RFP, except that if there are no TLPs containing a signal "arm" at any intersection, then up to two TLPs without signal "arms" may be used as sites at such intersection, and if there is only one TLP containing a signal "arm" at any intersection, then one TLP without a signal "arm" may also be used as a site at such intersection.

(ii) No TLP site shall be designated to a franchisee under this RFP which is within a 500-foot radius of any other site designated to that franchisee.

(iii) The City reserves the right to limit the TLP and HSSP sites available for designation to franchisees who receive franchises under this RFP to no more than two-thirds of the TLP and HSSP sites in the City. The remaining approximately one third of such sites are expected to be reserved for future use. If the City chooses thus to limit available sites, then before the commencement of any TLP/HSSP site designation process, the City will disclose which TLP/HSSP sites will be available for designation. The selection of available sites will be made with the following goals: (1) to allow franchisees to achieve wide and effective coverage for their mobile telecommunications systems, (2) to preserve sufficient undesignated sites that potential future providers will also be able to achieve wide and effective coverage and (3) other appropriate public purposes. Proposers are invited to suggest approaches as to how these goals can be achieved.

(c) General Site Requirements

(i) Franchisees will be limited to a maximum number of 3000 pole sites unless and until the City determines that such maximum should be increased.

(ii) A pole site shall be designated under this RFP to only one franchisee at any time.

(iii) Franchisees will provide that upon termination or expiration of the franchise, unless the franchise is renewed, the franchisee will, at the request of the City, remove its facilities from pole sites at the franchisee's expense.

(d) Definitions of TLP

A pole shall be deemed for the purpose of this RFP to be a traffic light pole, not a street light pole, if it is used to hold or support a traffic signal, even if it is also used to hold or support a street light.

(c) Unused Sites

If within 24 months of the designation of an SLP/TLP/HSSP site to a franchisee, such franchisee has not used such site for an antenna or cell site, DoITT shall have the option at any time thereafter, until the franchisee installs a facility on such site, of revoking the designation and making such site available to others.

(f) Coordination with Signage

Franchisees will work with the City on location and design of equipment installations to insure appropriate coordination with signage and other items located on poles.

4.3. ADDITIONAL REQUIREMENTS FOR PROPOSALS FOR FIBER OPTIC OR OTHER TELECOMMUNICATIONS CABLE

4.3.1 Franchise Fee

(a) Each franchisee which installs telecommunications cable in the inalienable property of the City, under a franchise granted pursuant to this RFP, to provide mobile signal transport for its own mobile telecommunications services or to provide (directly or through a related entity) any other permitted telecommunications service (other than leasing capacity on such cable to unrelated entities, which is treated in subsection (b) below) shall pay an annual franchise fee with respect to such cable installation equal to a percentage of the amount which such franchisee (or related entity) would have paid, at fair market rates, to obtain comparable signal transport or other telecommunications service from an unrelated third party provider of such services in an arms length transaction. The percentage referred to in the preceding sentence shall be 6% in calendar year 1997 and 5% thereafter throughout the term of the franchise unless and until such rates as included in the City's prevailing form of high-capacity telecommunications franchise are changed, in which case such percentage shall be changed, to match such prevailing form.

(b) To the extent a franchisee which installs telecommunications cable in the inalienable property of the City under a franchise granted pursuant to this RFP offers the use of such cable to unrelated entities (whether in connection with mobile service or for any other permitted telecommunications service), such franchisee shall pay an annual franchise fee equal to a percentage (based on the same schedule of percentages set forth in the last sentence of the preceding subsection (a)) of the gross revenue received by the franchisee from thus making such cable available. This fee will be in addition to, and not in lieu of, any fee payable pursuant to the preceding subsection (a).

(c) Fees payable as described in this Section 4.3 will be in addition to and not in lieu of any fees payable as described in Section 4.2 hereof.

4.4 MISCELLANEOUS

4.4.1 Coverage

All applicants are encouraged to propose systems which will provide service in areas of New York City, that include those areas outside the borough of Manhattan and north of 96th Street in Manhattan. Evaluations of proposals will take into significant account the extent to which proposals thus offer broad service coverage in the City.

4.4.2 In-Kind Services

Each franchisee granted a franchise pursuant to this RFP will be expected to provide in-kind services, consistent with the nature of the system established by such franchisee, supporting the City's transportation and telecommunications activities. All responses to this RFP should include an in-kind services proposal. During negotiation of final franchise agreements, DoITT will discuss with all proposers who have been approved to proceed to such negotiations a coordinated package of in-kind services structured to maximize efficiency for both the City and the franchisees. It should be noted that the City is developing a fiber optic traffic signal control network, which will allow direct central control of traffic signals and other transportation related communications. Proposals which include contributions to such a system are particularly encouraged.

4.4.3 City Costs

Franchise agreements entered into pursuant to this RFP will require that, upon execution of each such franchise agreement, each franchisee will be responsible for a pro rata portion of the City's costs of outside consultants incurred in the preparation and administration of this RFP and preparation and negotiation of franchise agreements pursuant thereto. Any such payments will be in addition to, not in lieu of, any other amounts due pursuant to the franchise agreement.